

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY	:	X
and CHARLIE SAVAGE,	:	
	:	
Plaintiffs,	:	
	:	
		<u>COMPLAINT</u>
- against -	:	
OFFICE OF THE DIRECTOR OF	:	
NATIONAL INTELLIGENCE,	:	
	:	
Defendant.	:	
	:	
		X

Plaintiffs THE NEW YORK TIMES COMPANY and CHARLIE SAVAGE, by their undersigned attorney, allege for their Complaint:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to obtain an order for the production of agency records from Defendant Office of the Director of National Intelligence (“ODNI”) in response to a FOIA request properly made by Plaintiffs.

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, in Manhattan.

3. Plaintiff Charlie Savage is a reporter for *The New York Times* and an employee of The New York Times Company.

4. Defendant ODNI is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. ODNI has failed to meet the statutory deadline set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A). Plaintiffs have therefore exhausted all administrative remedies, pursuant to 5 U.S.C. § 552(a)(6)(C).

FACTS

8. On September 18, 2017, The Times submitted a FOIA request to ODNI (ODNI Case DF-2017-00424) seeking “records such as memos and guidelines and instructions since January 1, 2017 regarding the preparation and formatting of the President’s Daily Brief.”

9. On September 29, 2017, ODNI acknowledged receipt of the request and further stated: “If we have not responded to you by the 20th working day, you have the right to consider our inability to meet the 20 day requirement for a response as a denial, and may appeal to the ODNI, Information Management Division, Washington, DC 20511 within 90 days of that date.”

10. On October 20, 2017, The Times appealed the constructive denial of its request.

11. ODNI has failed to respond to The Times’s initial FOIA request or subsequent administrative appeal within the statutory time frame required under FOIA.

COUNT I

12. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

13. Defendant ODNI is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

14. ODNI has failed to meet the statutory deadline set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A). Accordingly, Plaintiffs are deemed to have exhausted their administrative remedies under FOIA.

15. ODNI has no lawful basis for declining to release the records requested by Plaintiffs under FOIA.

16. Accordingly, Plaintiffs are entitled to an order compelling ODNI to produce records responsive to their FOIA request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

17. Declare that the documents sought by their FOIA request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

18. Order ODNI to provide the requested documents to Plaintiffs within 20 business days of the Court's order;

19. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and

20. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, NY
January 16, 2018

/s/
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